

IN THE SUPREME COURT OF MISSISSIPPI

NO.

2009-CA-01095

CEASAR OLIVE

APPELLANT

VS.

**WILLIE B. MCNEAL AND
BERNICE O. BOULDIN**

APPELLEES

REPLY BRIEF OF APPELLANT

**Appeal from the Chancery Court of
Madison County, Mississippi**

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Ceasar Olive, Plaintiff-Appellant; 447 Catlett Road, Madison, Mississippi 39110
2. Willie B. McNeal, Defendant-Appellee; 451 Catlett Road, Madison, Mississippi 39110
3. Bernice O. Bouldin, Defendant-Appellee; 2168 Tessmer Road, Ann Arbor,
Michigan 48103
4. Robert B. Ogletree, Ogletree Law Firm, P.A., Attorneys for Appellant
5. Bill Waller, Sr., Waller & Waller, Attorneys for Appellees
6. Honorable Cynthia Brewer, Chancery Court Judge, Canton, Mississippi

By: 

ROBERT B. OGLETREE (MSB# )

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TO THE HONORABLE COURT OF APPEALS:

Appellant, Ceasar Olive, files this his Reply Brief in response to the Brief of the Appellees, Willie B. McNeal and Bernice O. Bouldin.

ARGUMENT

Undue influence

Undue influence is a proper ground to contest the alleged “inter vivos” deed or gift as the subject of the present action. The issue of undue influence is present because someone – an admitted caregiver – received a gift from a person who was admittedly weak and dependent upon the caregiver. In the present case, all of the evidence establishes a confidential relationship existed between Caesar Olive and Willie McNeal during the relevant time period.

The undue influence principles apply regardless of whether a gift is made during life (inter vivos) or at death (testamentary). But there is a distinction between inter vivos and testamentary gifts. If the gift was made during lifetime (inter vivos), there is an automatic presumption of undue influence regardless of whether the confidential relationship was abused.

Mississippi’s law regarding undue influence is well established. If there is a confidential relationship, the court presumes that there has been undue influence. See *Lancaster v. Boyd*, 803 So. 2d 1285 (Miss. Ct. App. 2002). This means that, by default, gifts made to a person in a confidential relationship with the gift-giver are invalid. To overcome this default invalidity, the person receiving the gift must show good faith of the recipient, full knowledge and deliberation by the giver, and independent consent and action by the giver. Once the presumption is established, the burden shifts to the fiduciary

to rebut the presumption by clear and convincing evidence. *Id.* In order to overcome the presumption, the Appellees must show (1) that they exhibited good faith in the fiduciary relationship with Appellant; (2) Appellant acted with knowledge and deliberation when he executed the deed, and (3) Appellant exhibited independent consent and action. *Lancaster*, 803 So. 2d at 1289.

In the present case, the Appellant, Mr. Olive, established the existence of a confidential relationship coupled with suspicious circumstances surrounding the preparation and subsequent execution of the conveyance documents. See *In re Will of Fankboner v. Pallatin*, 638 So.2d 493 (Miss.1994). "A confidential relationship exists when a dominant overmastering influence controls over a dependent person or trust, justifiably reposed." *In re Estate of Dabney*, 740 So.2d 915, 919 (Miss. 1999). The factors used by the Courts to determine whether a confidential relationship existed between grantor and a beneficiary are as follows:

1. whether one person has to be taken care of by others,
2. whether one person maintains a close relationship with another,
3. whether one person is provided transportation and has their medical care provided for by another,
4. whether one person maintains joint accounts with another,
5. whether one is physically or mentally weak,
6. whether one is of advanced age or poor health, and
7. whether there exists a power of attorney between the one and another.

In examining the factors to be considered in determining the existence of undue influence in the present case, the testimony revealed that Appellant, Caesar Olive, was taken care of by Appellee, Willie McNeal, primarily, during the relevant time period

when the inter vivos deed was executed. Caesar Olive alleged and testified that Willie McNeal unduly influenced him to execute the subject documents when he and Willie McNeal believed and understood the instrument to be a “will” that could be changed and not a deed. Second, Willie McNeal testified that Caesar Olive had placed his trust in him and that he was Mr. Olive’s caregiver during the relevant time period surrounding the execution of the subject deed. The testimony further revealed that Caesar Olive’s physical health was compromised due to car accidents and head injuries and that he was dependent upon Willie McNeal for transportation to the doctor and household maintenance.

At trial, testimony was presented that, although Caesar Olive had been a businessman, he had serious physical problems and issues during the time period Mr. McNeal had the deed and affidavits prepared. Mr. McNeal even testified as to the care he provided to Caesar Olive during the relevant time period and the “trust” Mr. Olive placed in Mr. McNeal.

Evidentiary Review

The evidence was that Willie McNeal sought preparation of the deed, although he believed the instrument was a will. Mr. McNeal even testified that it was his and Caesar’s understanding that the instrument was a will and that it could be changed during Mr. Olive’s lifetime. Mr. McNeal met with the drafting attorney, made the request and gave the instructions without Mr. Olive being present during any of those conversations between Mr. McNeal and the drafting attorney. The instrument was then executed in the Chancery Clerk’s office, with only Willie McNeal and Caesar Olive present. There was no independent advice or counsel given to Mr. Olive, other than the explanation provided

to Mr. Olive from Mr. McNeal, which was insufficient and incorrect. There was substantial credible evidence that the Willie McNeal never exhibited good faith in this transaction.

The evidence before the Madison County Chancery Court and this Court establishes that Caesar Olive never acted with knowledge and deliberation when the conveyance documents were executed. Mr. Olive had no awareness of his action or its effect on his assets. Mr. Olive had no understanding of the instrument or its effect on the natural inheritors of his assets under the laws of intestacy or under any prior will and how the proposed deed, which he thought was a will, would legally affect his heirs or his ownership of the subject land prior will or natural distribution.

The evidence was undisputed that the beneficiary had the conveyance documents prepared, that the beneficiary was the sole person to discuss with the Grantor, Mr. Olive, the meaning and effect of the documents, that the Grantor, Mr. Olive received no independent advise or counsel, and that neither the beneficiary or the grantor had a correct understanding of the documents the beneficiary had Mr. Olive sign at the Madison County Courthouse. There was evidence that Mr. McNeal assisted or controlled Mr. Olive's affairs during the relevant time period after Mr. Olive fell ill. There was no substantial credible evidence to support any finding that Caesar Olive acted with knowledge and deliberation when the conveyance documents were was executed.

As applied to this case, the rules mean that because a confidential relationship between Caesar Olive and Willie McNeal, the inter vivos gift/deed was presumptively invalid. Period.

Because the Appellee, Willie McNeal, had a confidential relationship with

Appellant, Caesar Olive, and Mr. McNeal, the fiduciary, was the sole person involved in the preparation of the conveyance documents, to overcome the presumption of undue influence, Appellees were required to prove the following by clear and convincing evidence:

1. The Appellees, the beneficiaries, acted in good faith; and
2. The Appellant, the grantor, had full knowledge and deliberation in the execution of the subject documents.

The Madison County Chancery Court wholly erred in failing to even consider whether there was substantial credible evidence that Willie McNeal acted in good faith. The Madison County Chancery Court was required to determine this element, and examine who sought the preparation of the deed, where and in whose presence was the deed executed, and was the deed executed openly or secretly. See *Rogers v. Pleasant*, 729 So. 2d 192 (Miss. 1998). In the present case, the Chancellor failed to consider any of these matters.

Based on this evidence, the Madison County Chancery Court erred by failing to even consider or rule on the issue of confidential relationship between Caesar Olive and Willie McNeal. The Chancellor actually denied Appellee's motion to find that no confidential relationship existed between Mr. Olive and Mr. McNeal. (see Order dated December 4, 2008, signed by Madison County Chancellor, Cynthia Brewer, in Appellant's Record Excerpts filed herein) The Chancellor erred by simply stating that "one seeking to set aside a facially valid and recorded deed bears the burden of proof." That was not the correct legal standard to be applied to the present case. Further, the Chancellor erroneously misstated or applied the rules regarding undue influence and improperly placed the burden of proof on Appellant, Caesar Olive, to establish lack of

capacity and undue influence.

PRAYER FOR RELIEF

Based upon the foregoing, Appellant respectfully requests this Court to reverse the Order of the Chancery Court in all respects, instructing the Chancery Court of Madison County to reinstate the Plaintiffs action in accordance with its instructions. Alternatively, Appellant requests this Court reverse the Order of the Chancery Court and render a decision setting aside the Warranty Deed recorded in Book 1703 and Page 360 in the records of the Chancery Clerk of Madison County, Mississippi.

Appellant also requests all further relief, in law or equity, that the Court deems appropriate under the facts of this case.

Respectfully submitted, this the 12th day of April, 2010.



Robert B. Ogletree, Esq.

Attorney for the Plaintiff/Appellant

CERTIFICATE OF SERVICE

I, Robert B. Ogletree, attorney for the Plaintiff/Appellant, do hereby certify that I have this day delivered a true and correct copy of the above, foregoing document in a manner prescribed by law to:

Bill Waller, Sr.
Waller & Waller
Post Office Box 4
Jackson, MS 39205

Honorable Cynthia Brewer
Madison County Chancery Court Judge
Post Office Box 404
Canton, Mississippi 39046

This service effective this, the 12th day of April, 2010.

- ☐ () Handing same to said attorney(s).
- ☐ () Delivering same to the office of said attorney(s).
- ☒ (X) Depositing a copy thereof in the United States Mail, postage pre-paid and addressed as indicated above.
- ☐ () Depositing a copy thereof in the United States Mail, certified, return receipt, restricted delivery, address correction requested, postage pre-paid and addressed as indicated.
- ☐ () Faxing as well as mailing.


ROBERT B. OGLETREE, ESQ